

**IN THE COURT OF APPEALS OF IOWA**

No. 0-412 / 10-0627  
Filed June 30, 2010

**IN THE INTEREST OF J.A.-E.,  
Minor Child,**

**T.A.E., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father appeals the juvenile court's order modifying the child's placement away from the father and placing the child in family foster care. **AFFIRMED.**

Joey T. Hoover of Kragnes & Associates, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee.

Erin Carr, Des Moines, for mother.

Kayla Stratton, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

**TABOR, J.**

A father appeals the modification of the child's placement that removed her from the father's care and placed her in foster care. He contends the State failed to establish a significant change in circumstances that would justify modification and that the modification of placement was, therefore, improper.

**I. Background Facts and Proceedings**

The juvenile court removed J.A.-E., a seven-year-old child, from her mother's care on August 5, 2009, after the mother tested positive for methamphetamine and marijuana. The court placed J.A.-E. in the temporary care of her father. On September 9, 2009, the juvenile court adjudicated J.A.-E. to be a child in need of assistance (CINA).

On October 20, 2009, the court returned J.A.-E. to her mother's care and custody noting that the mother had completed treatment for her substance abuse, consistently provided negative drug screens, and complied with individual therapy. While in her mother's care, J.A.-E. reported that her father had shown her women's underwear and had told J.A.-E. that they were underwear from women he had been with prior to her mother. On February 23, 2010, the mother tested positive for methamphetamine and marijuana. Consequently, on March 9, 2010, the juvenile court removed J.A.-E. from her mother's care and placed her, again, in the temporary care of her father.

After J.A.-E.'s placement with her father, the Iowa Department of Human Services (DHS) received new information from the mother and J.A.-E. about the father's interactions with his daughter. The mother observed the father licking

J.A.-E.'s face. J.A.-E. reported to her mother that her father licked her teeth and tongue and reported to a Family Safety, Risk, and Permanency (FSRP) worker that her father cleaned her with his tongue when they did not have water. J.A.-E. reported that her father showered with her "but now he leaves his underwear on" when they shower. Prior to J.A.-E.'s second placement with her father, the FSRP worker noted that J.A.-E. slept either on the couch or in a hammock while at her father's house overnight. After the second placement in her father's care, the father and J.A.-E. routinely slept in the same bed together. In addition, the DHS learned that the father played catch or kicked a ball with J.A.-E. while he used the restroom. The father also resisted the child's participation in therapy, was reluctant to allow professionals to be alone with J.A.-E., and did not allow FSRP workers to transport J.A.-E. to therapy.

After discovering this information, on March 30, 2010, J.A.-E.'s guardian ad litem and the State moved to modify J.A.-E.'s placement moving her away from her father and into the custody of DHS for purposes of family foster care. The juvenile court granted this motion, modified J.A.-E.'s placement, and placed J.A.-E. in foster care citing the mother's ongoing substance abuse and the father's lack of boundaries with J.A.-E. After J.A.-E.'s placement in foster care, a support worker reported that the father licked J.A.-E.'s face during a supervised visit. The father now appeals.

## **II. Scope and Standard of Review**

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we

are not bound by those findings. *Id.* Our primary concern in guiding our decisions is the best interests of the child. *Id.*

Iowa Code section 232.103 (2009) provides for modification of a dispositional order. The party seeking modification must establish a “substantial change in material circumstances and that under the new conditions, a change is in the best interests of the child.” *In re D.G.*, 704 N.W.2d 454, 458 (Iowa Ct. App. 2005).

### **III. Merits**

The juvenile court found that clear and convincing evidence existed to support modifying J.A.-E.’s placement—moving her away from her father and into foster care. The court stated that placing J.A.-E. in the home of either parent is contrary to J.A.-E.’s welfare because of the “father’s lack of boundaries with his daughter” and the mother’s illegal substance abuse and failure to understand how it places J.A.-E. at risk. The court noted:

[T]his is a situation of family secrets. J.A.-E. is seven and has lived through the breakup of her parent’s relationship, her mother’s use of illegal drugs, moving to the custody of her father, back to her mother’s custody since the CINA proceeding commenced and then back to her father’s. . . . This is a child who needs a safe place to live and a caretaker who will actively support regular and consistent therapy for her. . . . [The parents’ continued] lack of honesty reinforces this judge’s conclusion that continuation of J.A.-E. in the custody of either parent at this time is contrary to J.A.-E.’s welfare.

The father contends that the State and guardian ad litem failed to establish a substantial change in material circumstances necessary to justify the modification of J.A.-E.’s placement. We agree with the juvenile court’s decision to modify J.A.-E.’s placement away from her father and into foster care.

The discovery of the father's inappropriate interactions and lack of boundaries with J.A.-E., subsequent to her placement in her father's care, amount to a substantial change in material circumstances and justify the juvenile court's modification order. In *In re J.F.*, 386 N.W.2d 149, 152 (Iowa Ct. App. 1986), the Iowa Court of Appeals held that "[t]he subsequent discovery of [a father's] ability to provide a stable environment for his child constitutes a sufficient change in circumstances and warrants modification of the original order." The natural corollary, the subsequent discovery of a father's inability to provide a safe or stable environment for his child because of his failure to recognize appropriate boundaries with his seven-year old daughter and his repeated improper contact with her, likewise constitutes a sufficient change in circumstances and supports modification of the child's placement. Therefore, the DHS's discovery of the following interactions support the juvenile court's modification: the father licked J.A.-E.'s face, teeth, and tongue on multiple occasions; showered with J.A.-E.; routinely slept in the same bed with J.A.-E.; and played catch with J.A.-E. while he used the restroom.

The father's minimization of the inappropriateness of his conduct, and his reluctance to support J.A.-E.'s therapy further buttress the conclusion that modification and placement in foster care is in the best interests of J.A.-E. The father has minimized the inappropriateness of his conduct by explaining, when asked about licking his daughter, that he was "just playing" with J.A.-E. and suggesting that "somebody" had "put it in her head" that he had licked her. Moreover, the father continued his inappropriate conduct after J.A.-E.'s removal

from his care when he licked J.A.-E.'s face during visitation. Both the father's downplaying of the contact and its repetition illustrate his lack of insight into the wrongfulness of these interactions and the likelihood of continued inappropriate conduct with J.A.-E. if she stayed in his care. *Cf. In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (stating that parents must "acknowledge and recognize [past] abuse before any meaningful change can occur"). In addition, the father has resisted the child's play therapy, which is necessary for J.A.-E.'s wellbeing, has been reluctant to allow professionals to be alone with J.A.-E., and has not allowed FSRP workers to transport J.A.-E. to her therapy.

These attempts to isolate J.A.-E. pose a risk of harm if she were to remain in her father's care. Neither J.A.-E.'s mother—because of her substance-abuse issues—nor her father—because of his inappropriate interactions with J.A.-E.—can provide a safe and stable home for J.A.-E. at present. Placement in foster care is, therefore, in the best interests of the child. To hold otherwise would subvert the child's best interests, the touchstone of our inquiry, to the preferences of parents who, as the juvenile court found here, are "dishonest and . . . minimize[ ] the situation to avoid losing custody of their" child.

**AFFIRMED.**